

From: [Drumond, Karen \(EOIR\)](#)
To: [All of Court Administrators \(EOIR\)](#); [All of Judges \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [EOIR Library \(EOIR\)](#); [BIA TEAM JLC](#); [BIA ATTORNEYS \(EOIR\)](#); [McHenry, James \(EOIR\)](#)
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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**

Case Law Bulletin

Week of August 21, 2017

[In Focus](#)

Third Circuit

[Romero Zambrano v. Sessions](#), No. 16-4254, 2017 WL 3598059 (3d Cir. Aug. 22, 2017) (unpublished) (ACF; CAT)

[Mendoza-Ordonez v. Att'y Gen. of United States](#), No. 16-3333, 2017 WL 3611991 (3d Cir. Aug. 23, 2017) (WOR; UAUW)

[Mohamed v. Att'y Gen. of United States](#), Nos. 16-1435, 16-3180, 2017 WL 3635521 (3d Cir. Aug. 24, 2017) (unpublished) (MTR)

Sixth Circuit

[Carrillo Santos v. Sessions](#), No. 16-4730 (6th Cir. Aug. 22, 2017) (unpublished) (Domestic Violence; UAUW) (unavailable on West)

Eighth Circuit

[Patel v. Sessions](#), No. 16-3619, 2017 WL 3594166 (8th Cir. Aug. 22, 2017) (Waiver-216(c)(4))

[United States v. Mata](#), No. 16-1709, 2017 WL 3666685 (8th Cir. Aug. 25, 2017) (ACCA-COV)

Ninth Circuit

[Marinelarena v. Sessions](#), No. 14-720003, 2017 WL 3611589 (9th Cir. Aug. 23, 2017) (BOP; inconclusive record of conviction)

The Ninth Circuit denied the PFR in part, concluding that petitioner's statute of conviction, Cal. Penal Code § 182(a)(1) (conspiring to sell and transport a controlled substance) is overbroad but divisible, and, after applying the modified categorical approach, concluded that the record of conviction was inconclusive as to whether the overt act in furtherance of the target offense related to a federally controlled substance. The Ninth Circuit concluded that its decision in *Young v. Holder*, 697 F.3d 976 (9th Cir. 2012) (en banc), in which it held that a "petitioner cannot carry the burden of demonstrating eligibility for cancellation of removal by establishing an inconclusive record of

[Stepanyan v. Sessions](#), No. 14-71891, 2017 WL 3669447 (9th Cir. Aug. 25, 2017) (unpublished) (CAT)

conviction,” remained good law and was not abrogated by the Supreme Court’s decision in *Moncrieffe v. Holder*, 569 U.S. 184 (2013). The Ninth Circuit vacated in part and remanded the CAT claim for further review, concluding that the BIA did not consider all evidence bearing on petitioner’s CAT claim.

[United States v. Robinson](#), No. 16-30096, 2017 WL 3648524 (9th Cir. Aug. 25, 2017) (USSG-COV)

The Ninth Circuit vacated the district court’s sentence, concluding that Wash. Rev. Code. § 9A.36.021 (second degree assault) does not constitute a crime of violence under USSG § 2K2.1 (“crime of violence” given the same meaning as USSG § 4B1.2(a) which is the same as 18 USC § 16) because it is overbroad and indivisible.

Eleventh Circuit

[United States v. Vail-Bailon](#), No. 15-10351, 2017 WL 3667647 (11th Cir. Aug. 25, 2017) (USSG-COV)

On rehearing en banc, the Eleventh Circuit affirmed the sentencing enhancement of the district court, concluding that Fla. Stat. Ann. § 784.041 (felony battery) constitutes a crime of violence under the elements clause of USSG § 2L1.2(b)(1)(A)(ii) (same as 18 U.S.C. § 16(a)).